

**ASSEMBLY BILL**

**No. 894**

**Introduced by Assembly Member Nakano**

February 23, 2001

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An act to amend Sections 23036 and 24990.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 894, as introduced, Nakano. Bank and corporation taxes: capital losses.

The Bank and Corporation Tax Law conforms to federal income tax laws with respect to the treatment of capital gains and losses except that, among other things, specified federal limitations on capital losses do not apply to taxable years beginning before 1990, and a carryover of 5 years is allowed with carrybacks of capital losses sustained in taxable years beginning after 1989.

This bill would allow a taxpayer to elect to apply its capital losses incurred in taxable years beginning on or after January 1, 1995, and before January 1, 2000, and its capital losses incurred in taxable years beginning on or before December 31, 1994, and on or after January 1, 1990, as provided. This bill would provide that if the aggregate of the redetermined aggregate tax liabilities for the applicable years is less than the aggregate tax liabilities for those years, a credit shall be allowed, as specified.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 23036 of the Revenue and Taxation  
2     Code is amended to read:  
3     23036. (a) (1) The term “tax” includes any of the following:  
4     (A) The tax imposed under Chapter 2 (commencing with  
5     Section 23101).  
6     (B) The tax imposed under Chapter 3 (commencing with  
7     Section 23501).  
8     (C) The tax on unrelated business taxable income, imposed  
9     under Section 23731.  
10    (D) The tax on S corporations imposed under Section 23802.  
11    (2) The term “tax” does not include any amount imposed  
12    under paragraph (1) of subdivision (e) of Section 24667 or  
13    paragraph (2) of subdivision (f) of Section 24667.  
14    (b) For purposes of Article 5 (commencing with Section  
15    18661) of Chapter 2, Article 3 (commencing with Section 19031)  
16    of Chapter 4, Article 6 (commencing with Section 19101) of  
17    Chapter 4, and Chapter 7 (commencing with Section 19501) of  
18    Part 10.2, and for purposes of Sections 18601, 19001, and 19005,  
19    the term “tax” shall also include all of the following:  
20    (1) The tax on limited partnerships, imposed under Section  
21    17935 or Section 23081, the tax on limited liability companies,  
22    imposed under Section 17941 or Section 23091, and the tax on  
23    registered limited liability partnerships and foreign limited  
24    liability partnerships imposed under Section 17948 or Section  
25    23097.  
26    (2) The alternative minimum tax imposed under Chapter 2.5  
27    (commencing with Section 23400).  
28    (3) The tax on built-in gains of S corporations, imposed under  
29    Section 23809.  
30    (4) The tax on excess passive investment income of S  
31    corporations, imposed under Section 23811.  
32    (c) Notwithstanding any other provision of this part, credits  
33    shall be allowed against the “tax” in the following order:  
34    (1) Credits that do not contain carryover provisions.  
35    (2) Credits that, when the credit exceeds the “tax,” allow the  
36    excess to be carried over to offset the “tax” in succeeding taxable  
37    years. The order of credits within this paragraph shall be  
38    determined by the Franchise Tax Board.



1 (3) The minimum tax credit allowed by Section 23453.

2 (4) Credits for taxes withheld under Section 18662.

3 (d) Notwithstanding any other provision of this part, each of  
4 the following ~~shall be~~ *are* applicable:

5 (1) No credit ~~shall~~ *may* reduce the “tax” below the tentative  
6 minimum tax (as defined by paragraph (1) of subdivision (a) of  
7 Section 23455), except the following credits, but only after  
8 allowance of the credit allowed by Section 23453:

9 (A) The credit allowed by former Section 23601 (relating to  
10 solar energy).

11 (B) The credit allowed by former Section 23601.4 (relating to  
12 solar energy).

13 (C) The credit allowed by Section 23601.5 (relating to solar  
14 energy).

15 (D) The credit allowed by Section 23609 (relating to research  
16 expenditures).

17 (E) The credit allowed by Section 23609.5 (relating to clinical  
18 testing expenses).

19 (F) The credit allowed by Section 23610.5 (relating to  
20 low-income housing).

21 (G) The credit allowed by former Section 23612 (relating to  
22 sales and use tax credit).

23 (H) The credit allowed by Section 23612.2 (relating to  
24 enterprise zone sales or use tax credit).

25 (I) The credit allowed by Section 23612.6 (relating to Los  
26 Angeles Revitalization Zone sales tax credit).

27 (J) The credit allowed by former Section 23622 (relating to  
28 enterprise zone hiring credit).

29 (K) The credit allowed by Section 23622.7 (relating to  
30 enterprise zone hiring credit).

31 (L) The credit allowed by former Section 23623 (relating to  
32 program area hiring credit).

33 (M) For each taxable year beginning on or after January 1,  
34 1994, the credit allowed by Section 23623.5 (relating to Los  
35 Angeles Revitalization Zone hiring credit).

36 (N) The credit allowed by Section 23625 (relating to Los  
37 Angeles Revitalization Zone hiring credit).

38 (O) The credit allowed by Section 23633 (relating to targeted  
39 tax area sales or use tax credit).

1 (P) The credit allowed by Section 23634 (relating to targeted  
2 tax area hiring credit).

3 (Q) The credit allowed by Section 23649 (relating to qualified  
4 property).

5 (R) *The credit allowed by subdivision (d) of Section 24990.5*  
6 *(relating to capital losses).*

7 (2) No credit against the tax ~~shall~~ *may* reduce the minimum  
8 franchise tax imposed under Chapter 2 (commencing with Section  
9 23101).

10 (e) Any credit ~~which~~ *that* is partially or totally denied under  
11 subdivision (d) shall be allowed to be carried over to reduce the  
12 “tax” in the following year, and succeeding years if necessary, if  
13 the provisions relating to that credit include a provision to allow  
14 a carryover of the unused portion of that credit.

15 (f) Unless otherwise provided, any remaining carryover from  
16 a credit that has been repealed or made inoperative shall continue  
17 to be allowed to be carried over under the provisions of that section  
18 as it read immediately prior to being repealed or becoming  
19 inoperative.

20 (g) Unless otherwise provided, if two or more taxpayers share  
21 in costs that would be eligible for a tax credit allowed under this  
22 part, each taxpayer shall be eligible to receive the tax credit in  
23 proportion to its respective share of the costs paid or incurred.

24 (h) Unless otherwise provided, in the case of an S corporation,  
25 any credit allowed by this part shall be computed at the S  
26 corporation level, and any limitation on the expenses qualifying  
27 for the credit or limitation upon the amount of the credit shall be  
28 applied to the S corporation and to each shareholder.

29 (i) (1) With respect to any taxpayer that directly or indirectly  
30 owns an interest in a business entity that is disregarded for tax  
31 purposes pursuant to Section 23038 and any regulations  
32 thereunder, the amount of any credit or credit carryforward  
33 allowable for any taxable year attributable to the disregarded  
34 business entity shall be limited in accordance with paragraphs (2)  
35 and (3).

36 (2) The amount of any credit otherwise allowed under this part,  
37 including any credit carryover from prior years, that may be  
38 applied to reduce the taxpayer’s “tax,” as defined in subdivision  
39 (a), for the taxable year shall be limited to an amount equal to the  
40 excess of the taxpayer’s regular tax (as defined in Section 23455),

determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to that disregarded business entity. No credit shall be allowed if the taxpayer's regular tax (as defined in Section 23455), determined by including the income attributable to the disregarded business entity is less than the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (d), (e), and (f).

SEC. 2. Section 24990.5 of the Revenue and Taxation Code is amended to read:

24990.5. (a) Section 1201 of the Internal Revenue Code, relating to alternative tax for corporations, shall not be applicable.

(b) ~~The~~ *For capital loss carryovers from taxable years beginning on or after January 1, 1990, and beginning before January 1, 2000, the provisions of Section 1212 of the Internal Revenue Code, relating to capital loss carrybacks and carryovers, are modified as follows:*

(1) Section 1212(a)(1)(A) of the Internal Revenue Code, relating to capital loss carrybacks, shall not apply.

(2) Section 1212(a)(3) of the Internal Revenue Code, relating to special rules on carrybacks, shall not apply.

(3) Sections 1212(b) and 1212(c) of the Internal Revenue Code, relating to taxpayers other than a corporation, shall not apply.

(c) *Except as provided in subdivision (b), for taxable years beginning on or after January 1, 2000, the provisions of Sections 1211 and 1212 of the Internal Revenue Code, relating to limitation, carryover, and carryback of capital losses shall not apply.*

(d) (1) *In lieu of the treatment of capital loss carryovers described by subdivision (b) and in regulations promulgated under Section 25106.5, a taxpayer may elect, on a timely filed original return, for its first taxable year beginning on or after January 1, 2000, to apply, in the manner prescribed by this subdivision, its:*

1 (A) Capital losses incurred in taxable years beginning on or  
2 after January 1, 1995, and before January 1, 2000.

3 (B) Capital losses incurred in taxable years beginning on or  
4 before December 31, 1994, and on or after January 1, 1990.

5 (2) A taxpayer electing under this subdivision shall  
6 redetermine what its tax liability would have been for each taxable  
7 year in which a loss described in paragraph (1) was incurred  
8 (without regard to statutes of limitation), and all years thereafter,  
9 as if the capital loss was deductible in that year without limitations  
10 of Internal Revenue Code Sections 1211 and 1212, reflecting  
11 appropriate treatment as business or nonbusiness expense, as the  
12 case may be.

13 (A) The deduction for capital losses described in subparagraph  
14 (B) of paragraph (1) is limited to the sum of each year's net capital  
15 gain determined pursuant to California law incurred during the  
16 five-year capital loss carryover period (described by Section 1212  
17 of the Internal Revenue Code, as modified by subdivision (b) of this  
18 section) to which the loss may be carried.

19 (i) The net capital gain for any given year described in the  
20 preceding sentence is the remaining capital gain for that year after  
21 netting capital losses with capital gains for that same year. If  
22 capital losses are greater than capital gains for any given year, the  
23 net capital loss for that year will not reduce capital gains in any  
24 other year for purposes of determining net capital gain for  
25 purposes of subparagraph (A) of paragraph (2).

26 (ii) The net capital gain determined pursuant to California law  
27 for purposes of determining the capital loss deduction under this  
28 section for any of the legal entities subject to the election under this  
29 subdivision and for any given year of the five-year carryover  
30 period can only be used once for purposes of determining the  
31 capital loss deduction under this section for that legal entity.

32 (iii) Subject to clause (ii), the net capital gain of the members  
33 of a unitary combined reporting group of corporations that are  
34 treated as conducting a single trade or business under Section  
35 25101 is determined for each year by netting the total capital gains  
36 determined pursuant to California law of all members included in  
37 the unitary combined reporting group during that year with the  
38 total capital losses of those members for that year during the  
39 five-year capital loss carryover period.

1 (B) If the aggregate of the redetermined tax liabilities for the  
2 taxable years described in this paragraph is less than the  
3 aggregate tax liabilities for those years determined without  
4 reference to this subdivision, the difference in the aggregate  
5 amounts shall be allowed as a credit against the "tax" (as defined  
6 by Section 23036) for taxable years beginning on or after January  
7 1, 2000.

8 (C) Any unused credits may be carried forward without  
9 limitation.

10 (3) In the computation of the redetermined tax liabilities under  
11 paragraph (2), to the extent that a capital loss deduction under that  
12 subparagraph, creates or increases a net operating loss, that  
13 portion of the net operating loss shall be available for  
14 carryforward in accordance with Section 24416, except that the 50  
15 percent limitations of subdivision (b) of Section 24416 shall not  
16 apply.

17 (4) If the redeterminations described in paragraph (2) would  
18 have resulted in the creation of or an increase in a net operating  
19 loss, credit, or other carryover which would be available as a  
20 carryforward into taxable years beginning on or after January 1,  
21 2000, those carryovers shall be available to those taxable years,  
22 in a manner consistent with that redetermination.

23 (5) All taxpayer members of the combined reporting group  
24 required to apportion its income under Chapter 17 (commencing  
25 with Section 25101) shall elect under this subdivision for the  
26 election to be effective. A key corporation, as defined in Section  
27 25106.5(b)(14) of Title 18 of the California Code of Regulations,  
28 may elect on behalf of all taxpayer members on whose behalf the  
29 key corporation files a group return. In the event that some of the  
30 taxpayer members of a combined reporting group make an election  
31 under this subdivision and others do not, the Franchise Tax Board  
32 may waive the requirement to file the election on a timely filed  
33 original return for good cause.

34 (6) A taxpayer electing under this subdivision may elect to  
35 assign any portion of the credit allowed under this section to one  
36 or more taxpayers in its current or former combined reporting  
37 group. Credits that are not used by a taxpayer member of a  
38 combined reporting group in one year may be reassigned to any  
39 other taxpayer member of the current or former combined  
40 reporting group in a subsequent taxable year if the election to make



1 *the assignment is expressly shown on each of the returns of the*  
2 *taxpayers that assign and receive the credit.*

3 *(7) The election provided in paragraph (6):*

4 *(A) May be based on any method selected by the corporation*  
5 *that originally receives the credit.*

6 *(B) Is irrevocable for the taxable year the credit is allowed,*  
7 *once made.*

8 *(8) A taxpayer electing under this section may not deduct a*  
9 *capital loss carryover for any taxable year beginning on or after*  
10 *January 1, 2000.*

11 *(9) The Franchise Tax Board may prescribe, by ruling or*  
12 *regulation, rules relating to changes in the composition of the*  
13 *members of a combined reporting group whose members are*  
14 *subject to an election under this subdivision.*

15 SEC. 3. This act provides for a tax levy within the meaning of  
16 Article IV of the Constitution and shall go into immediate effect.

